

UNITED STATES DISTRICT COURT
Northern District of California

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

FRANKY GOMEZ,

Defendant.

No. C 11-4694 MEJ

ORDER TO SHOW CAUSE

On September 21, 2011, Defendant Franky Gomez removed this unlawful detainer action from San Joaquin County Superior Court. An unlawful detainer action does not arise under federal law but is purely a creature of California law. *Wells Fargo Bank v. Lapeen*, 2011 WL 2194117, at *3 (N.D. Cal. June 6, 2011); *Wescom Credit Union v. Dudley*, 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010). Further, although Defendant alleges diversity jurisdiction, Defendant admits that he is a resident of the State of California, Not. of Removal at 2, and Plaintiff brought this action in California as the property at issue is in California. Where diversity is cited as a basis for jurisdiction, removal is not permitted if a defendant in the case is a citizen of the state in which the plaintiff originally brought the action, even if the opposing parties are diverse. 28 U.S.C. § 1441(b). Moreover, the amount in controversy requirement does not appear to be met because Plaintiff's damages claim is under \$10,000. Under 28 U.S.C. § 1332(a), a district court has original jurisdiction over civil actions only where the amount in controversy, exclusive of interest and costs, exceeds \$75,000. Thus, it appears that jurisdiction is lacking and the case should be remanded to

1 state court.

2 Accordingly, the Court ORDERS Defendant Franky Gomez to show cause why this case
3 should not be remanded to the Contra Costa County Superior Court. Defendant shall file a
4 declaration by October 11, 2011, and the Court shall conduct a hearing on October 20, 2011 at 10:00
5 a.m. in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco, California. In his
6 declaration, Defendant must address how this Court has jurisdiction over Plaintiff's unlawful
7 detainer claim. Defendant should be mindful that an anticipated federal defense is not sufficient to
8 confer jurisdiction. *Franchise Tax Bd. of California v. Construction Laborers Vacation Trust*, 463
9 U.S. 1, 10 (1983).

10 **IT IS SO ORDERED.**

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12 Dated: September 27, 2011

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15 Maria-Elena James
16 Chief United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Case Number: 11-4694 MEJ

Plaintiff,

CERTIFICATE OF SERVICE

v.

FRANKY GOMEZ,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 27, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Franky Gomez
6123 Mohican Drive
Manteca, CA 95336

Dated: September 27, 2011

Richard W. Wieking, Clerk
By: Brenda Tolbert, Deputy Clerk